No. 14-55592
U.S.D.C. No.3:12-cv-01718-GPC-BLM

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RICHARD M. HORN, an individual and as Trustee of the Richard M. Horn Trust Dated June 16, 2003, on behalf of himself and all others similarly situated and MARIA GUREVICH, an individual, on behalf of herself, and on behalf of the class of all others similarly situated,

Plaintiffs and Appellees,

SUSAN HOUSE

Objector and Appellant,

v.

BANK OF AMERICA, N.A., a national banking association,

Defendant and Appellee.

DECLARATION OF DAVID J. VEDLER IN SUPPORT OF THE RESPONSE OF APPELLEES RICHARD HORN and MARIA GUREVICH TO MOTION OF APPELLANT SUSAN HOUSE FOR AN ORDER VACATING DISMISSAL OF APPEAL

Appeal from the United States District Court
For the Southern District of California

The Honorable Gonzalo P. Curiel, United States District Judge

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DECLARATION OF DAVID J. VENDLER

I, David J. Vendler, declare and say as follows:

1. I am an attorney duly licensed to practice before all of the state and federal courts of California and Massachusetts and am a partner in the law firm of Morris Polich & Purdy LLP, co-counsel of record for appelees, Richard Horn and Maria Gurevich. I have personal knowledge of the following facts and if called to testify thereto, I could and would do so competently.

2. Objector House filed her appeal on April 14, 2014.[1] A true and correct copy of her amended notice of appeal is attached hereto as Exhibit "A." The appeal was docketed despite House's failure to then pay the requisite filing fee.

3. On April 17, 2014, this Court gave House an additional 21 days – to May 8, 2014 – in which to pay the fee. A true and correct copy of this Court's April 17, 2014 order is attached hereto as Exhibit "B." House did not pay the fee, ask for an extension, or ask to proceed in forma pauperis, during this 21-day grace period.

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[1] House's original notice of appeal was from the order finally approving the class action settlement and the striking of House's objection. The amended notice of appeal included within its ambit the ensuing judgment that was entered by the district court after the final approval order.

4. On May 13th 2014, this Court dismissed House's appeal. A true and correct copy of this Court's May 13, 2014 order is attached hereto as Exhibit "C."

5. Upon receiving and reviewing Objector House's motion to reinstate her appeal, my office undertook an investigation into the factual assertion made in Mr. Palmer's declaration accompanying Ms. House's motion that Mr. Palmer had a trial that was scheduled to start on May 16th in the Southern District of New York. My office determined that this case that supposedly prevented him from paying the filing fee on behalf of Objector House was a *personal* case of attorney Palmer. He was personally sued for reneging on a stock purchase agreement and defamation. Attached hereto as Exhibit "D" is a true and correct copy of the Complaint in the case entitled *CMF Investments, Inc. v. Palmer*, No. 1:13-cv-00475.

6. Our investigation into Mr. Palmer's New York case also revealed that the trial that was supposedly so all-consuming as to prevent him from paying House's filing fee was scheduled for exactly one day. Attached hereto as Exhibit "E" is a true and correct copy of the Docket from that case. (See entry dated 3/25/14 relating to the one-day schedule for the trial).

7. Mr. Palmer had from April 14, 2014 until May 13, 2014 when the appeal was dismissed to pay the filing fee. Even after the Court issued its April 17, 2014 order granting him a 21-day grace period, he had fully 26 days during which he could have paid the fee before this Court finally dismissed the appeal on May 13.

8. According to the docket from Palmer's New York case, Palmer submitted absolutely nothing to the district court in New York between April 17 (when this Court gave him an additional 21 days to pat the filing fee) and May 8 (the 21st day). On day 22, while he still does not pay the filing fee, he did manage to file his exhibit list and trial brief in New York in his personal lawsuit. See entry of 5/9/14 from Exhibit "E."

9. Attached hereto as Exhibit "F" is a true and correct copy of the final approval order in the underlying case.

10. The district court in its order found the class's reaction to the settlement was very favorable. See final approval order at paras. 16-17. At that time, approximately 54,000 claim forms had been filed with the class administrator, Garden City Group. Since that time, more than 11,000 additional claim forms have been submitted such that the total number of claim forms on file as of May 18, 2014, is 65,504. Since the claims period remains open until July 13, 2014, thousands more claims are likely to be

filed.[2] A true and correct copy of Garden City Group's May 19, 2014 status report is attached hereto as Exhibit "G." As can be seen from this report, only 30 timely exclusion requests were received.

11. Even though notice packages were sent out to more than 200,000 class members,[3] there was only one objection filed -- by appellant House, represented by attorney Palmer. See Final Order (Exhibit "F" at ¶ 17). A true and correct copy of House's objection is attached hereto as Exhibit "H."

12. House's objection included a notice of intent to appear at the fairness hearing, and a declaration by House that included two documents purporting to establish her membership in the class.

13. Borrowers objected to House's declaration and moved in their opposition that House's objection should be stricken because her documents failed to show that she had standing, i.e., that she was a class member. True

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[2] The filing of a claim form is not proof of eligibility or class member status. Any person can go to the www.hornsettlement.com web site and fill out a claim form, even Ms. House. After the claim form submissions deadline of July 13, 2014, the claims administrator will then verify the names on the claim forms against the list of persons who actually paid deferred interest during the class period.

[3] Some class members had more than one loan and thus received multiple notice packages. This is why a total of approximately 309,000 notice packages were sent out to a class of roughly 210,000 persons.

and correct copies of Borrowers' opposition to the House objection, the supporting declaration of Michael R. Brown, and Borrowers' objections to the House declaration, are attached hereto as Exhibit "I" and "J" and "K." House and Palmer submitted nothing in response to these documents and provided no further evidence to the district court to demonstrate her supposed standing.

14. As noted, the House objection also included a notice of intent to appear at the fairness hearing. The district court, at the fairness hearing, asked "[I]s Susan House here?" and indicated that it was prepared to allow her to supplement her evidence to cure the standing issue that had been raised by Borrowers. There was no response. A true and correct copy of the "Transcript of Motion Hearing [Final Approval of Class Action Settlement] Before The Hon. Gonzalo P. Curiel United States District Judge" is attached hereto as Exhibit "L." Neither House nor her attorney, Palmer, bothered to show up at the fairness hearing despite filing a notice of intent to appear and that Palmer's office is located just a few miles from the district court. A true and correct copy of the "Transcript of Motion Hearing [Final Approval of Class Action Settlement] Before The Hon. Gonzalo P. Curiel United States District Judge" is attached hereto as Exhibit "L." The district court thus dismissed her appeal, finding as a factual matter that House's declaration

failed to demonstrate her class membership. *Id.* at pp. 1:22-2:14 and Exhibit "F" at para. 17.

15. This case is not the first case in which House has been represented by Palmer as a class action objector. Palmer was House's attorney in the case of *Ralston v. Mortgage Investors Group, Inc.*, USDC N.D. Cal. No. 08-cv-00536. In that case, House filed her objection only to then withdraw it.

16. House is also currently being represented by Palmer as a class action objector in the case of *Rose v. Bank of America Corporation* (USDC N.D Cal, No. 5:11-cv-02390. According to the last docket entry in that case, (April 4, 2014), the motion for final approval in that case is currently under submission.

17. Finally, in the case of *Lockett v. Mogreet, Inc.* (2013) Case No. 13 CH 21352 Circuit Court of Cook County, Ill., County Dept., Chancery Div.), House filed an objection supposedly *in pro per*. When it appeared that Palmer was acting behind the scenes as House's attorney without securing a *pro hac vice* admission, the Illinois Court initiated an investigation to determine the nature of Palmer's involvement. House then withdrew her objection. Attached hereto as Exhibit "M" and "N" is the

motion brought in the Illinois Court and its order calling for the investigation of Palmer.

18. Attached hereto as Exhibit "O" is a true and correct copy of a Memorandum and Order striking a Palmer objection for failure to file the objection timely.

19. I have also learned by looking at the California State Bar website that Palmer is already facing California State Bar charges for filing false declarations in support of *pro hac vice* applications in other cases and this is doubtless the reason that he had House file *in pro per* in the Lockett case.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed at Los Angeles, California on May 23, 2014.

s/ David J. Vendler

David J. Vendler, *Declarant*